UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION DOCKET NO. 3:13-CV-00131-FDW-DCK

TROPICAL NUT & FRUIT CO.,)	
Plaintiff,)	
vs.)	ORDER
FORWARD FOODS, LLC and RECHARGE FOODS, LLC,)))	
Defendants.)	

THIS MATTER is before the Court upon Plaintiff Tropical Nut & Fruit Co.'s Motion to Dismiss Count I of Defendants' Counterclaims and to Strike Defendants' Second and Third Defenses. (Doc. No. 23). In its Motion and accompanying Memorandum, (Doc. No. 24), Plaintiff argues that Count I of Defendants Forward Foods, LLC and Recharge Foods, LLC's (collectively "Defendants") Counterclaims should be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted, and that Defendants' Second and Third defenses to Plaintiff's claims should be striken under Rule 12(b)(6) and 12(f)(2) on the grounds that they are insufficient defenses and essentially duplicate Count I of Defendants' Counterclaims. Upon review by the Court, this Motion is DENIED WITHOUT PREJUDICE. Plaintiff is free to raise these issues again at summary judgment.

IT IS SO ORDERED.

Signed: July 16, 2013

Frank D. Whitney

Chief United States District Judge